



MVN-2010-1148-CY, Big River Industries

Tamara Mick to: John.M.Herman

06/11/2010 03:19 PM

Cc: "Davis, Chris (F&R)", jamie.philippe, "Balkum, Kyle",
Patti_Holland, Seth_Bordelon

John,

The Environmental Protection Agency (EPA) has reviewed the Joint Public Notice (JPN), dated May 24, 2010, concerning Department of the Army Permit Application Number MVN-2010-1148-CY, submitted by Big River Industries Inc. The applicant is proposing to expand an existing surface mining operation for commercial use located in Erwinville, Pointe Coupee Parish, Louisiana. The proposed project would affect approximately 168.0 acres of jurisdictional wetlands. The comments that follow are being provided for use in reaching a decision relative to compliance with the EPA's *404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230)*.

The jurisdictional wetlands that would be impacted by this project not only provide good quality habitat for indigenous and migratory avian species as well as a variety of mammals but also perform valuable water quality maintenance functions by removing excess nutrients and pollutants from the water. They also provide floodwater storage. As you are aware, wetland areas such as those proposed to be impacted have experienced a tremendous decline in Louisiana. The 404(b)(1) Guidelines prohibit the discharge of dredged or fill material into waters of the United States, including wetlands, if there is a practicable alternative. The JPN does not indicate that the applicant considered alternative, non-wetland locations nor is there any indication that the applicant attempted to avoid and/or minimize wetland impacts. It is assumed that a non-water dependent activity, such as a commercial surface mining operation, does not require setting in a wetland to provide its basic function and that less damaging alternatives exist.

EPA is concerned with the potential direct, indirect, and cumulative impacts of the proposed project. Construction of the proposed project will result in the loss of wetland habitat and will likely impact other important wetland functions including floodwater abatement and water quality improvement. These functional losses, when combined with increased impervious surfaces resulting from the project, may lead to adverse downstream impacts such as decreased water quality and increased flooding. Moreover, the proposed project would add to cumulative development-related wetland losses in Pointe Coupee Parish.

Therefore, EPA recommends that a Department of the Army Permit not be issued for this activity until the applicant addresses the need for the project and its location within a wetland area, the proposed project design is the least damaging, agrees to incorporate measures into the project development plans to reduce the flow of nonpoint source pollution into adjacent wetlands, and agrees to provide compensatory mitigation, within the project watershed, for the replacement of habitat value and wetland functions that would be lost.

Thanks for the opportunity to review and comment on the JPN. If you have any questions or would like to discuss further, please don't hesitate to call.

Tamara Mick
US EPA Region 6
Marine & Wetlands Section
214-665-7134

*fws - adam
durf - benj & adam*

*EPA 404-11 - cut on AA, mit plan, (EWS-308-11)
durf 4-07-11 durf seedling survival, notes, slope*

*plan - talks about
no secondary impacts*



BOBBY JINDAL
GOVERNOR

State of Louisiana

DEPARTMENT OF WILDLIFE AND FISHERIES
OFFICE OF WILDLIFE

ROBERT J. BARHAM
SECRETARY

JIMMY L. ANTHONY
ASSISTANT SECRETARY

June 17, 2010

Mr. Pete J. Serio, Chief
Regulatory Branch
United States Army Corps of Engineers
P. O. Box 60267
New Orleans, LA 70160-0267

RE: *Application Number: MVN-2010-1148-CY*
Applicant: Big River Industries, Inc.
Public Notice Date: May 24, 2010

Dear Mr. Serio:

The professional staff of the Louisiana Department of Wildlife and Fisheries (LDWF) has reviewed the above referenced Public Notice. Based upon this review, the following has been determined:

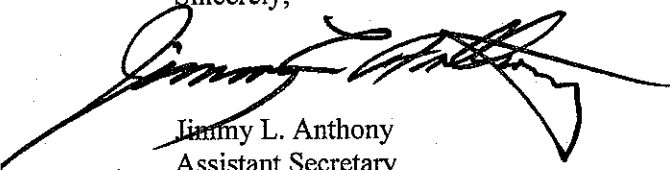
Although the applicant states that the proposed expansion site cannot be avoided, LDWF recommends that the applicant be required to provide an alternative site analysis for the proposed activity. We understand that the proposed site is known to be rich in a particular clay soil sought by the applicant; however, we assume that the surrounding area, possessing similar geology, also contains these soils. The analysis should include lesser quality sites (e.g., agricultural fields, previously impacted areas, etc.) located in the vicinity of the proposed activity.

LDWF is also interested in viewing a wetland map of the proposed site. Are the 168 acres of forested wetlands distributed throughout the site or are there larger contiguous wetland areas that may be avoided and/or preserved? This information should be provided to regulatory and resource agencies for review.

Due to the magnitude of both direct and indirect adverse impacts associated with the proposed activity, LDWF requests that the U.S. Army Corps Permit not be issued at this time.

The Louisiana Department of Wildlife and Fisheries appreciates the opportunity to review and provide recommendations to you regarding this proposed activity. Please do not hesitate to contact Habitat Section biologist Matthew Weigel at 225-763-3587 should you need further assistance.

Sincerely,



Jimmy L. Anthony
Assistant Secretary



United States Department of the Interior

FISH AND WILDLIFE SERVICE
646 Cajundome Blvd.
Suite 400
Lafayette, Louisiana 70506



June 10, 2010

Colonel Alvin B. Lee
District Engineer
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267

C.C.

Dear Colonel Lee:

The U.S. Fish and Wildlife Service (Service) has reviewed Joint Public Notice MVN-2010-1148-CY, dated May 24, 2010. Big River Industries, Inc. has requested a Department of the Army permit to clear and excavate wetlands for the expansion of a surface mining operation in Erwinville, Pointe Coupee Parish, Louisiana. This report is submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

According to the Public Notice, the proposed mining operation would produce 18.7 million cubic yards of clay over 30 years. The clay is heated to extreme temperatures, causing it to expand into a lightweight aggregate material known as Gravelite. This product is used for many commercial applications such as bulkheads, retaining walls, concrete masonry units, roads and flexible pavements, etc. The proposed impact area is a recently harvested bottomland hardwood forest that contains tributaries to Bayou Chalpin and Bayou Cholpe. Approximately 56% of the site is classified as jurisdictional wetlands, while the ridges along the tributaries are non-wetlands. The site is bordered by forested properties to the north and south, Cholpe Acres Wetland Mitigation Bank to the west, and the existing mining operation to the east.

In assessing potential project impacts, the Service considers both the value of the affected habitats to fish and wildlife and their relative scarcity. The project-area wetlands provide habitat for a variety of migratory non-game birds such as red-headed woodpecker, wood thrush, worm-eating warbler, Swainson's warbler, Kentucky warbler, and painted bunting. Those species have exhibited substantial population declines over the last 30 years, primarily as the result of habitat loss and fragmentation. Those wetlands also support mammals such as raccoon, opossum, eastern cottontail, swamp rabbit, fox squirrel, grey squirrel, and white-tailed deer. In addition to their habitat values, the project-area wetlands provide floodwater storage and aid in water quality maintenance by reducing excessive dissolved nutrient levels and removing suspended sediments.

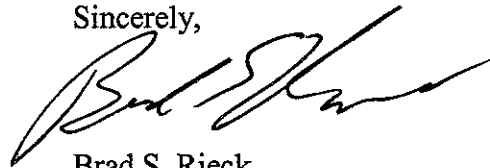
The proposed mining expansion would impact 168 acres of jurisdictional floodplain wetlands, including their fish and wildlife habitat values and water quality maintenance functions.

**TAKE PRIDE[®]
IN AMERICA** 

According to soil survey data from the Natural Resources Conservation Service (NRCS), the proposed impact area contains Sharkey clay soils. The Public Notice states that these particular soils are necessary to produce Gravelite. Based on recent aerial images (2008) and the NRCS soil data, there appear to be several non-forested properties nearby the Big River facility that contain Sharkey clay soils. Those properties would be less environmentally damaging because they lack the wildlife habitat values and water quality maintenance functions that forested wetlands provide. Since the operation already involves trucking clay back and forth between a mined area and the facility, we feel that any less damaging property within a reasonable driving distance to the facility would be practicable. The Service recommends that the applicant provide the U.S. Army Corps of Engineers (Corps) with a detailed alternative sites analysis of suitable properties in the vicinity of Erwinville. If a less environmentally damaging alternative is found and is available, then the Service would recommend that the presently requested permit not be issued.

The above findings and recommendations constitute the report of the Department of the Interior. Please contact Seth Bordelon (337/291-3138) of this office if additional information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad S. Rieck', written in a cursive style.

Brad S. Rieck
Deputy Supervisor
Louisiana Field Office

cc: EPA, Dallas, TX
LDWF, Baton Rouge, LA

REQUEST FOR ADDITIONAL INFORMATION
DEPARTMENT OF ARMY PERMIT APPLICATION
FILE NO: MVN 2010-1148-CY, DATED: June 23, 2010

A. Detailed Alternative Analysis

As requested a detailed Alternative Analysis report has been prepared and is attached. The report explains in detail the project purpose and needs for continued operation at the BRI Gravelite Division Plant. It includes supporting documentation as to "the relative extent of the public and private need for the proposed work." This need is represented by the geographic area and specific service the material provides compared to other building materials without lightweight aggregate. The report also identifies numerous alternative sites and why those sites were eliminated as potential mineable sites.

B. Hydrologic Analysis

1. Describe hydrologic effects by removing the onsite tributaries leading to Bayous Chalpin and Cholpe.

Water management on the extension property will be similar to the existing mining operations where rainfall, surface water runoff, and ground water infiltration are directed to an existing Louisiana Pollutant Discharge Elimination system outfall discharging to Bayou Poydras. Bayou Poydras is a tributary of Choctaw Bayou. Continuation of discharge into Bayou Poydras as a result of mining the proposed extension area will not result in any additional significant impacts to water quality or water flow in the Bayou Poydras, Bayou Choctaw, Bayou Chalpin or Bayou Cholpe drainage systems.

2. What is the percentage of water volume that will be removed from the system?

The percentage of water removed will be only that water that is discharged through the LADEQ approved point discharge (outfall). This water will consist of excess water that cannot be maintained on site and must be discharged.

3. How will it affect the future health and maintenance of these bayous?

Water management on the extension property will be similar to the existing mining operations where rainfall, surface water runoff, and ground water infiltration are directed to an existing Louisiana Pollutant Discharge Elimination system outfall discharging to Bayou Poydras. Bayou Poydras is a tributary of Choctaw Bayou. Continuation of discharge into Bayou Poydras as a result of mining the proposed extension area will not result in any additional significant impacts to water quality or water flow in the Bayou Poydras, Bayou Choctaw, Bayou Chalpin or Bayou Cholpe drainage systems. There will be no future health or maintenance issues with regards to the Bayous.

4. How will the project affect hydrology of the water dependent wetlands within the Cholpe Acres Wetland Mitigation Bank located on the western boundary of the proposed project?

Mining in the proposed extension area is not expected to impact the Cholpe Acres Wetland Mitigation Bank. Mining water levels in the extension area will be maintained below the floor of the mine, which may be 50 feet below grade. The mine water management system may include routing water along a perimeter ditch to be constructed along the western side of the extension area, if required to maintain hydration of the mitigation area. The purpose of the perimeter ditch would be to act as a hydraulic barrier preventing drawdown of ground water levels below the Cholpe Acres Wetland Mitigation Bank. After mining is complete, water levels in the mine pit will be allowed to return to natural, ambient levels and will not impact the adjacent mitigation bank.

C. GRN comments

1. The destruction of coastal wetlands directly conflicts with Louisiana's Master Plan and Executive Order issued by Governor Jindal;

The wetlands located within the subject property are freshwater bottomland forested wetlands. The proposed activities are located at 12652 Airline Highway, Erwinville within Section 26, Township 06 South, Range 10 East of Pointe Coupee Parish and are not within the regulatory boundaries of the Coastal Zone Management Plan. The Coastal Zone Management Plan is the regulating rule derived from the *Louisiana's Comprehensive Management Plan for a Sustainable Coast* and the Executive Order modifying this plan.

2. The drawings do not delineate potentially impacted wetlands or waterways;

A formal wetland delineation was issued by the Corps on April 27, 2009. A copy of the issued delineation and drawing is attached. The Corps indicated that "the wetlands and non-wetlands are so intermingled that a detailed map cannot be completed without a survey." Therefore, it was determined by the Corps that 56% of the property is wetland and subject to jurisdiction.

3. Water dependence was not demonstrated in the public notice;

Clay mining is not a water dependant activity. However, the areas where the high quality clay deposits are located are within hydric soils of Sharkey clay. The majority of the areas within these soils are considered wetlands. As such, the product is in water dependent areas. Similar to mining peat, wetlands have to be impacted to access the product for public use.

4. Direct, indirect, secondary, and cumulative impacts must be fully considered;

The 311.8 acre project site is located west and southwest of the active BRI Gravelite Division Plant, with Sharp Lane traversing the center of the property. Once the overall activities are setback from the road and utility easements approximately 300 acres of the site are proposed to be cleared for mining activities, directly impacting approximately 168 acres of forested wetlands. To mine clay deposits the site will be cleared of vegetation and overburden material, then mined to a depth of 50 feet below existing grade. The area to be excavated is approximately 271 acres. The remaining 29 acres of disturbances will include access and perimeter roads, along with a perimeter berms and

ditches to maintain water quality and water elevations within and around the site.

The initial activities include the property area north of Sharp Lane and will impact 91.9 acres of delineated wetlands. The portion of the project within the property area south of Sharp Lane has the remaining 76.1 acres of proposed wetland impacts. Each area will have a direct impact on the functions provided by the forested wetlands once all the vegetation and top soil is removed within the project area. Due to the intermingled nature of the uplands and wetlands on the site and the limitations for mining impacts to the wetlands could not be minimized. The site has no consolidated areas of wetlands that could be preserved or avoided. The functions of the impacted wetland system will be mitigated for to a point of no net loss of wetlands. See the attached Round Lake Mitigation Area Permittee Responsible Mitigation Plan by Delta Land Services (DLS) for the initial portion of the mitigation. To provide assurance that the remaining impacts are offset and the mitigation will be conducted, a surety bond will be provided to the Corps as part of this permit for the estimated cost of the remaining mitigation based on the current Wetland Assessment Value scoring of the existing system and mitigation plan. A detailed Wetland Mitigation Plan, addressing compensation to offset the impacts to the remaining 76.1 acres of wetlands, will be submitted to the Corps for review and approval 6 months prior to the proposed disturbances in the parcel south of Sharp Lane. Mining activities and/or clearing or grading associated with mining will not be conducted south of Sharp Lane until the remaining mitigation is approved by the Corps'.

There are no anticipated indirect, secondary, and/or cumulative impacts by the proposed project. As noted above, water management on the extension property will be similar to the existing mining operations where rainfall, surface water runoff, and ground water infiltration are directed to an existing Louisiana Pollutant Discharge Elimination system outfall discharging to Bayou Poydras. Bayou Poydras is a tributary of Choctaw Bayou. Continuation of discharge into Bayou Poydras as a result of mining the proposed extension area will not result in any additional significant impacts to water quality or water flow in the Bayou Poydras, Bayou Choctaw, Bayou Chalpin or Bayou Cholpe drainage systems.

5. Alternatives have not been adequately addressed;

As noted above in comment "A" alternatives have been reviewed and addressed in the attached Alternative Analysis report.

6. Public notice failed to adequately describe the mitigation plan;

The detailed mitigation plan is outlined in the attached Permittee Responsible Mitigation report prepared by Delta Land Services (DLS) for the Round Lake Mitigation Area.

7. The final plan, including a mitigation plan, should be made available to the public before any permits are granted;

The proposed mitigation plan is described in the report prepared by DLS for the Corps to review and is copied to all interested parties.

8. Could the mitigation required to offset wetland lost be adequate and complete enough to replace those lost functions and values.

Yes, the mitigation proposed is expected to adequately offset the initial activities of the proposed impacts. The wetlands were assessed utilizing the approved Wetland Value Assessment (WVA) methodology, which evaluates the lost functions by a particular system and assesses the appropriate amount of mitigation to offset those lost functions. WVA assessment sheets for the initial activities of the mitigation are attached with the DLS Round Lake Mitigation Plan. This assessment determined that the proposed 113.2 acres of wetland mitigation will offset 91.9 acres of impacts. The remaining 92.0 acres of mitigation will be submitted for approval prior to impacting the remaining area of the project.

The functions of the forested system will be replaced with type for type mitigation and most of the wetland mitigation will be constructed and planted prior to functions within the system being lost by the proposed activities. In addition to the 1.2 : 1 mitigation replacing the existing functions, the project area will be reclaimed creating open water habitat. After mining, the site will have open water lakes with vegetated littoral shelves providing aquatic habitat. These aquatic habitats provide additional food and water sources to wildlife, nesting areas, as well as providing stormwater treatment for water flowing through the site and floodwater storage.

Application for Department of the Army Permit

Application Item 23

Description of Avoidance, Minimization, and Compensation

The applicant cannot avoid or minimize the proposed impacts to wetlands based on the following:

- 1) The BRI plant in Erwinville, Louisiana was established at this location in 1946 due to the particular clays in this area that bloat (expand) at or below 2200° F. These suitable clays for lightweight aggregate are predominately in the Louisiana Sharkey Clay soils under wetlands.
- 2) The existing mine is equipped to mine the clay reserves on the adjacent properties using dewatering and tractor- pulled scrapers. At this facility, it is not practical or feasible to haul 500,000 to 600,000 cubic yards per year of suitable clay soil (resource material) any distance on public roads or highways using large trucks.
- 3) The 311.8 ± acre site supports a vegetative community that is uniform with subtle changes between uplands and wetlands, which vary only by the gradual highs and lows that snake through the site. This intermingled nature of the uplands and wetlands on site prevent the mining operation from being maneuvered around to avoid wetland systems. The approved Wetland Jurisdictional Determination (MUN-2007-04129-JC), issued April 27, 2009 by the Corps, indicated that approximately 56% of the property is wetland. The wetlands to be impacted is estimated at 168 ± acres based on approximately 56% of 300 ± acres of disturbed area by the proposed mining .
- 4) The initial activities of the project will impact 91.9 acres of wetlands north of Sharp Lane and impact the remaining 76.1 acres of wetlands south of Sharp Lane. The attached Round Lake Mitigation Area Permittee Responsible Mitigation Plan by Delta Land Services (DLS) shows the proposed mitigation for the initial activities of the project. To provide assurance that the remaining impacts are offset and the mitigation will be conducted, a surety bond will be provided to the Corps as part of this permit for the estimated cost of the remaining mitigation based on the current Wetland Assessment Value scoring of the existing system and mitigation plan. A detailed Wetland Mitigation Plan, addressing compensation to offset the impacts to the remaining 76.1 acres of wetlands, will be submitted to the Corps for review and approval 6 months prior to the proposed disturbances in the parcel south of Sharp Lane. Mining activities and/or clearing or grading associated with mining will not be conducted south of Sharp Lane until the remaining mitigation is approved by the Corps'.

Project Notes:

- a.) Approximately 18.7 ± Million cubic yards of clay will be mined over the project life within the 311.8 ± acre area. Vegetation and organic debris will be systematically cleared prior to mining soils.
- b.) All process and storm water will be managed and discharged in accordance with Louisiana Department of Environmental Quality regulations.

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

OMB APPROVAL NO. 0710-0003

EXPIRES: 31 August 2012

Public reporting burden for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
--------------------	----------------------	------------------	------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME: Greg Knight Company - Big River Industries, Inc. E-mail Address - Greg.Knight@oldcastleapg.com	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) Stephen W. Berry, P.E. and R. Fred Crabill, SESI Company - SWB Engineering Sciences, Inc. & Southeast Environmental Solutions, Inc. E-mail Address - thebear@cfi.r.com ; fcrabill@sesi.cc
6. APPLICANT'S ADDRESS. Address - 12652 Airline Highway City - Erwinville State - LA Zip - 70729 Country - USA	9. AGENT'S ADDRESS Address - SWB Eng.: PO Box 941385, Maitland, FL 32794-1385 SESI : 801 North Park Road. Plant City. FL 33563-3956
7. APPLICANT'S PHONE NOS. W/AREA CODE. a. Residence 225-627-5447 b. Business 225-627-4242 c. Fax 225-627-5901	10. AGENT'S PHONE NOS. W/AREA CODE. a. Residence SWB 407-629-0692 SESI 863-660-4559 b. Business 407-539-1699 813-752-1289 c. Fax 407-539-0388 813-757-0721

STATEMENT OF AUTHORIZATION

11. I hereby authorize Stephen W. Berry / R. Fred Crabill to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE

DATE

2/15/2011

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions) Big River Industries, Inc. Gravelite Division Plant	
13. NAME OF WATERBODY, IF KNOWN (if applicable) Tributaries to Bayou Chalpin and Bayou Cholpe	14. PROJECT STREET ADDRESS (if applicable) Address 12652 Airline Highway City - Erwinville State - LA Zip - 70729
15. LOCATION OF PROJECT Latitude: "N 30° 31' 40.8" Longitude: "W 91° 25' 12"	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) State Tax Parcel ID 00516838A & 00516838 Municipality Erwinville, LA Section - 26 Township - 06S Range - 10E	
17. DIRECTIONS TO THE SITE Adjacent to and southwest of existing mine and plant site located at 12652 Airline Highway, Erwinville, LA 70729 within Pointe Coupee Parish. The existing mine site is split between Pointe Coupee Parish and West Baton Rouge Parish in Sect. 23, 24, & 26, T6S/R10E.	

18. Nature of Activity (Description of project, include all features)

The nature of the proposed activity includes clearing, grubbing and systematic mining of the Sharkey clay soil to a depth of 50 feet within the 311.8+/- acre project area. See Figures 3 through 8. The mining activity involves loosening or disking the surface soil and subsequent excavation/hauling by a tractor-pulled scraper to the covered clay shed. The clay is then fired in a kiln and processed as lightweight aggregate for wholesale distribution via tandem dump trucks and railcars. The mine expansion proposes over the 30 year project life to create approximately 271+/- acres of open water lakes and disturbed 300+/- acres of land, of which 168+/- acres (56% of the proposed impact area) would have been wetlands.

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

The overall purpose for the proposed project is to continue to mine clay and provide affordable, high quality, construction-grade light-weight aggregate from BRI's Gravelite Division Plant in Erwinville, Louisiana that meets LA DOTD, public and private needs and specifications.

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED**20. Reason(s) for Discharge**

The proposed mining activity includes discharging overburden material into wetlands and surface waters. The overburden material will be stored along the banks of the mine pit. Some of the material will be used to construct an access road/safety berm surrounding the pit. The remaining wetlands on the site will be dredged as part the mining process. The wetlands to be impacted over a 30 year period is estimated at 168+/- acres based on the attached Corps Wetland Jurisdictional Determination issued April 27, 2009 indicating that approximately 56% of the property is wetland.

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type Amount in Cubic Yards	Type Amount in Cubic Yards	Type Amount in Cubic Yards
Overburden Soils 0.44 +/- Million CY	Clay 18.7 +/- Million CY	

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

Acres 168+/- acres (56% of 300+/- acre work area as determined by the Corps) are proposed to be filled and/or dredged as part of the mining process.
Or
Liner Feet

23. Description of Avoidance, Minimization, and Compensation (see instructions)

See Item 23 attachment and the attached Project Description Summary, Alternatives Analysis, and Round Lake Mitigation Area Plan.

24. Is Any Portion of the Work Already Complete? Yes ☐ No ☒ IF YES, DESCRIBE THE COMPLETED WORK**25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody** (if more than can be entered here, please attach a supplemental list).

Address -- See Attached Address List

City -- State -- Zip --

26. List of Other Certifications or Approvals/Denials Received from other Federal, State, or Local Agencies for Work Described in This Application.

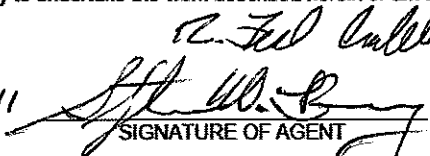
AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
LADEQ / AIR	Part 70 Operating Permit	2260-00002-V1		Sept. 19, 2008	
LADEQ	PSD Permit	PSD-LA-713		June 28, 2006	
LADEQ / LPDES	Water Quality Permit	LA0090387	Aug. 27, 2009	May 13, 2010	
USACE	Wetland Jurisdiction	MVN-2007-04129-SC		April 27, 2009	

* Would include but is not restricted to zoning, building, and flood plain permits

27. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.


SIGNATURE OF APPLICANT

2/15/2011
DATE


SIGNATURE OF AGENT

2/18/11
2/17/11
DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

JD



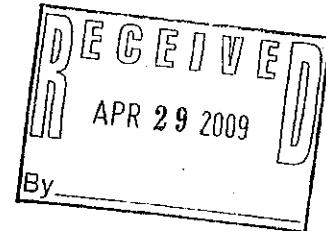
DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF

APR 27 2009

Operations Division
Surveillance and Enforcement Section

Mr. Josh McEnany
Gulf South Research Corporation
8081 GSRI Avenue
Baton Rouge, Louisiana 70820



Dear Mr. McEnany:

Reference is made to your request, on behalf of Big River Industries, Incorporated, for a U.S. Army Corps of Engineers' (Corps) jurisdictional determination on property located in Section 26, Township 6 South, Range 10 East, Pointe Coupee Parish, Louisiana (enclosed map). Specifically, this property is identified as a 320-acre tract located south of U.S. Hwy. 190 and west of LA Hwy. 413.

Based on review of recent maps, aerial photography, soils data, the information provided with your request, and several field investigations, we have determined that approximately 56% of the property is wetland and subject to Corps' jurisdiction. The wetlands and nonwetlands are so intermingled that a detailed map cannot be completed without a survey. A Department of the Army permit under Section 404 of the Clean Water Act will be required prior to the deposition or redistribution of dredged or fill material into the wetlands on this property.

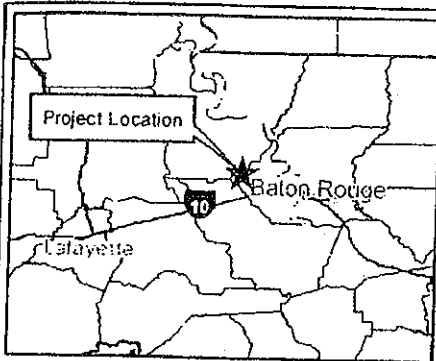
You and your client are advised that this approved jurisdictional determination is valid for a period of 5 years from the date of this letter unless new information warrants revision prior to the expiration date or the District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.

Should there be any questions concerning these matters, please contact Mr. Gary Couret at (337) 291-3042 and reference our Account No. MVN-2007-04129-SC. If you have specific questions regarding the permit process or permit applications, please contact our Western Evaluation Section at (504) 862-1950. The New Orleans District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please complete and return the enclosed Customer Service Survey or complete the survey on our web site at <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,


Pete J. Serio
Chief, Regulatory Branch

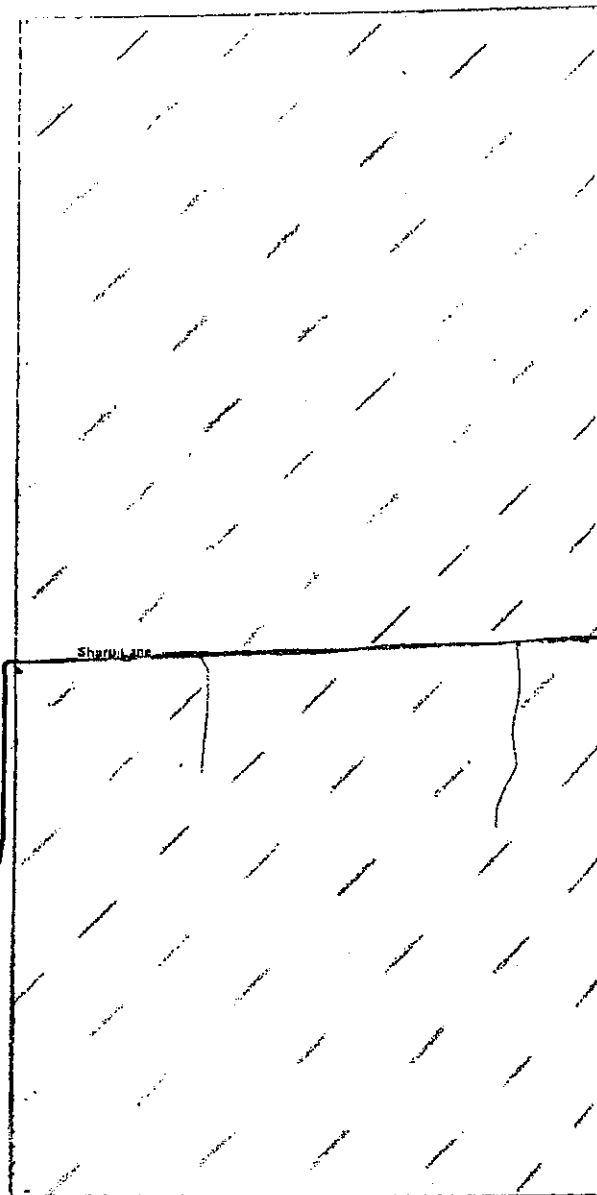
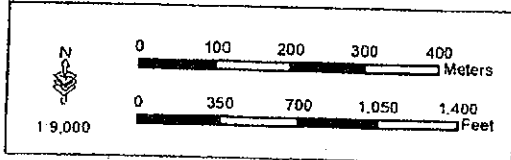
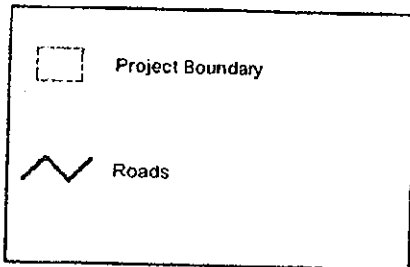
Enclosures



APPROVED JURISDICTIONAL DETERMINATION

USACE Acct. # MVN-2007-04129-SC
For J. McEnany, GSRC, with consultant's field data
fsy 2/13/08-4/16/09gmc, et. al. Sec. 26, T6S, R10E,
Pointe Coupee, La
Lat. 30.5216, Long. -91.4266

 ~ 56% Wetland (179.2 ac).
44% Nonwetland (140.8 ac)



EXISTING
CLAY
PIT

Edwards Lane

WOODS

WOODS

REV MAP 17 APR 09

Figure 4: Wetland Map
Big River Industries 320 - Acre Site
T6S-R10E, Section 26
Erwinville, Louisiana



March 2009

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): April 17, 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MVN-2007-04129-SC

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: LA County/parish/borough: Pointe Coupee City: Erwinville
Center coordinates of site (lat/long in degree decimal format): Lat. 30.517° N, Long. -91.426° W.
Universal Transverse Mercator:

Name of nearest waterbody: Bayou Chalpin

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Bayou Chalpin (lower reaches)

Name of watershed or Hydrologic Unit Code (HUC): 8070300

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: March 4, 2009

☒ Field Determination. Date(s): February 13, 2008, April 3 & 29, 2008, January 15, 2009, February 19, 2009 & April 16, 2009.

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 0 acres.

Wetlands: 179.2 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): Unknown.

2. Non-regulated waters/wetlands (check if applicable):³

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B. below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List

Drainage area: Acres

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) **General Tributary Characteristics (check all that apply):**

- Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

Subsurface flow: **Unknown**. Explain findings:

☐ Dye (or other) test performed:

Tributary has (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings:
 - ☐ Fish/spawn areas. Explain findings:
 - ☐ Other environmentally-sensitive species. Explain findings:
 - ☐ Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: Pick List. Explain:

Surface flow is: Pick List

Characteristics:

Subsurface flow: Unknown. Explain findings:

☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
 - ☐ Discrete wetland hydrologic connection. Explain: .
 - ☐ Ecological connection. Explain:
 - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are Pick List river miles from TNW.

Project waters are Pick List aerial (straight) miles from TNW.

Flow is from: Pick List.

Estimate approximate location of wetland as within the Pick List floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings:
 - ☐ Fish/spawn areas. Explain findings:
 - ☐ Other environmentally-sensitive species. Explain findings:
 - ☐ Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: Pick List

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
 - ☐ TNWs: linear feet width (ft), Or, acres.
 - ☐ Wetlands adjacent to TNWs: acres.
2. RPWs that flow directly or indirectly into TNWs.
 - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Bayou Chalpin (offsite) is a perennial water as designated on the soil survey and USGS quadrangle map. It is also a TNW in its lower reaches.
 - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.

Identify type(s) of waters:

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.

Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Wetlands onsite are part of a very large, contiguous, wetland system that adjoins various perennial waters including Bayou Chalpin.**
☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: **165.1** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: _____ acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: _____ acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain:
☐ Other factors. Explain:

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters:

☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

☐ Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource:

☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource:

☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☐ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps:

☐ Corps navigable waters' study:

☐ U.S. Geological Survey Hydrologic Atlas:

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000, Erwinville.

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>.

☐ National wetlands inventory map(s). Cite name:

☐ State/Local wetland inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): SONRIS, 1998 & 2004.

or ☒ Other (Name & Date): Consultant's field report photos dated August & September 2007. Corps field investigation photos dated February 13, 2008 and February 19, 2009.

☐ Previous determination(s). File no. and date of response letter:

☐ Applicable/supporting case law:

☐ Applicable/supporting scientific literature:

☒ Other information (please specify): NRCS hydric soil determination dated February 6, 1995. Field site visit conducted onsite January 11, 1995 by NRCS and the Corps to delineate hydric soils.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Big River Industries

File No.: MVN-2007-04129-SC

Date: APR 27 2009

Attached is:

See Section below

INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)

A

PROFFERED PERMIT (Standard Permit or Letter of permission)

B

PERMIT DENIAL

C

☒ APPROVED JURISDICTIONAL DETERMINATION

D

PRELIMINARY JURISDICTIONAL DETERMINATION

E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

(over)

SECTION II: REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

Rob Heffner (504-862-1288)
Chief, Surveillance and Enforcement Section
U.S. Army Corps of Engineers
P.O. Box 60627
New Orleans, LA 70160

If you only have questions regarding the appeal process you may also contact the Division Engineer through:

James B. Wiseman, Jr.
Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39181-0080
(601) 634-5820
(601) 634-5816 (fax)

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date: _____

Telephone number: _____